IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SEVENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 9056 of 2005

Between:

M.Venkateswar Rao S/o. Late M.Narayana Rao,
Pendurthi Branch, Visakhapatnam District.

..... PETITIONER

AND

The General Manager (Disciplinary Authority) The District Co-op Cenral Bank Ltd., D.No.58-14-57/1, Marripalem, Vuda Layout, NH-5 Road, N.A.D.Post, Visakhapatnam-530 009.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ or order or direction more particularly one in the nature of writ of Mandamus declaring the show cause notice in Ref:VLC/SP No.098/2005-06 dt.07-04-2005 issued by the respondent as illegal, arbitrary, violative of principles of natural justice, against the law laid down by the Courts from time to time and accordingly set aside and pass such other or further order or orders.

Counsel for the Petitioner: MR.K.R.SRINIVAS, Advocate

Counsel for the Respondent: M.S.RAMACHANDRA RAO, Advocate

The Court, at the stage of admission, made the following :

THE HONOURABLE SRI JUSTICE K.C.BHANU

WRIT PETITION NO : 9056 of 2005

ORDER:

Assailing the action of the respondent in issuing show cause notice dated 07-04-2005, as illegal and arbitrary, the present writ petition has been filed.

2 . Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent.

3. The learned counsel for the petitioner raised two contentions in this writ petition. The first contention is that the show cause notice contained the proposed punishment, which is in violation of the Principles of Natural Justice. The next contention is that the Enquiry Officer indicated the punishment in the report. On both these grounds, the learned counsel for the petitioner sought to declare these proceedings as illegal and arbitrary.

4 . On the other hand, the learned Standing Counsel, appearing for the respondent, relied upon the decisions reported in ***HUKUM CHAND v. UNION OF INDIA*** and ***STATE OF M.P. v. RAM RATAN*** and contended that the proposed punishment must be indicated in the show cause notice. In support of this contention he also relied on the Memorandum of Settlement arrived at between The Andhra Pradesh Cooperative Banks' Association, Hyderabad, and the Andhra Pradesh Bank Employees Federation, Hyderabad, stating that as per the Settlement, proposed punishment should be indicated in the show cause notice so that the affected party will be given hearing as regards the nature of punishment and hence, the order under challenge does not suffer from any incurable legal infirmities calling interference by this Court.

5. Normally, this Court will not interfere with the show cause notice, unless the

authority who issued notice has no jurisdiction. The main contention raised by the petitioner is with regard to the challenge to the show cause notice, dated 07-04-2005, on the basis of the observations made by this Court in W.P.No.22091 of 2004, dated 01-12-2004, wherein, it was held that:

> "….The impugned show cause notice is clearly violative of principles of natural justice, inasmuch as the findings, that were recorded by the Enquiry Officer, in favour of the petitioner, were reversed by the disciplinary authority, without hearing him…"

6. That is a case, where the disciplinary authority reversed the findings of the Enquiry Officer and accordingly, show cause notice was issued without giving an opportunity to the petitioner therein. So, in those circumstances, the Principles of Natural Justice have been violated. But, in the instant case, it is not a case of reversal of findings observed by the Enquiry Officer and here the findings of the Enquiry Officer were accepted by the disciplinary authority and in accordance with the Memorandum of Settlement, the proposed punishment has been indicated in the show cause notice. So, the decision has no application to the facts of the present case. The learned counsel for the respondent relied upon a decision (1st supra cited), where under the Apex Court held that, 'Notice to show cause against the proposed punishment mentioning all the three major punishments is held to be not bad'.

7. This view was also reiterated in the decision (2nd supra cited). Therefore, the contention of the learned counsel for the petitioner cannot be accepted with regard to the indication of punishment by the Enquiry Officer.

8. The relevant portion of the Domestic Enquiry Report, dated 28-03-2005, conducted by the Enquiry Officer, reads as follows:

> "The employee is held responsible for the loss caused to the assets of the Bank and the Bank should recover the loss caused to its assets from the employee."

9. A perusal of the said report makes it clear that it is the only observation made by the Enquiry Officer. But, it shall not be considered as recommendation of the Enquiry Officer to the disciplinary authority for imposing

the punishment. Therefore, the next contention of the learned counsel for the petitioner with regard to the show cause notice containing proposed punishment, cannot be accepted since the show cause notice is not vitiated. Even otherwise, this aspect can be left open to the petitioner to raise the same before the disciplinary authority.

10. In the result, the writ petition is devoid of merit and is accordingly dismissed. All the remedies available are left open to the petitioner. No costs.

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April 27, 2005

Kvr

To

1. The General Manager (Disciplinary Authority) The District Co-op Cenral Bank Ltd., D.No.58-14-57/1, Marripalem, Vuda Layout, NH-5 Road, N.A.D.Post, Visakhapatnam-530 009.

2. Two C.D.Copies.